



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0277; FRL-9997-70-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Source-Specific Reasonably Available Control Technology Determinations for
2008 Ozone National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve three state implementation plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions address reasonably available control technology (RACT) requirements under the 2008 ozone national ambient air quality standard (NAAQS) for three facilities in Northern Virginia through source-specific determinations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0277 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2038. Ms. Vélez-Rosa can also be reached via electronic mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On February 1, 14, and 15, 2019, the Virginia Department of Environmental Quality (VADEQ) submitted three separate revisions to its SIP addressing RACT under the 2008 ozone NAAQS for three facilities in Northern Virginia. The SIP revisions consist of source-specific RACT determinations for each facility.

I. Background

RACT is an important strategy for reducing oxides of nitrogen (NO_x) and volatile organic compounds (VOC) emissions from major stationary sources within areas not meeting the ozone

NAAQS. Since the 1970's, EPA has consistently defined "RACT" as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.¹

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through adoption of RACT. In addition, Section 182 of the CAA sets forth additional RACT requirements for the ozone NAAQS for moderate, serious or severe nonattainment areas. Section 182 requires states to implement RACT for VOC sources in the area covered by a control technique guideline (CTG) document issued by EPA, all other major stationary sources of VOCs that are located in the area, and major stationary sources of NO_x. The section 182 RACT requirements are usually referred to as CTG RACT, major non-CTG VOC RACT, and major NO_x RACT.

Further, section 184(b)(1)(B) of the CAA requires states to implement RACT in any areas located within ozone transport regions established pursuant to section 184. This requirement is referred to as OTR RACT. A single ozone transport region (the OTR) has been established under section 184(a), which comprises of 12 States, including the District of Columbia, the Northern portion of Virginia, and portions of Maryland as part of the Consolidated Metropolitan Statistical Area (CMSA). The Northern portion of Virginia (hereafter Northern Virginia) consists of the Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, Manassas Park City, and Stafford County. The three facilities which are the subject of this Notice of Proposed

¹ See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," and also 44 FR 53762; September 17, 1979.

Rulemaking are located in Northern Virginia, and thus subject to OTR RACT.

On March 12, 2008, EPA revised the 8-hour ozone standards, by lowering the standard to 0.075 parts per million (ppm) averaged over an 8-hour period (2008 ozone NAAQS). *See* 73 FR 16436. On May 21, 2012, EPA designated the Washington, DC-MD-VA area as a marginal ozone nonattainment area for the 2008 ozone NAAQS. The Washington, DC-MD-VA marginal ozone nonattainment area includes all cities and counties in the Northern portion of Virginia that are part of the OTR, with exception of the Stafford County. *See* 77 FR 30088 and 40 CFR 81.347.

On March 6, 2015, EPA issued its final rule for implementing the 2008 ozone NAAQS (“the 2008 Ozone SIP Requirements Rule”).² In addressing RACT requirements, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and EPA’s previous ozone implementation rule. For 2008 ozone NAAQS, only Northern Virginia is subject to RACT due to its location in the OTR, as no moderate nonattainment areas were designated by EPA under the standard.

II. Summary of SIP Revision and EPA Analysis

Virginia’s February 1, 14, and 15, 2019 SIP revisions address NO_x and/or VOC RACT for the following facilities: Virginia Electric and Power Company- Possum Point Power Station, Covanta Alexandria/Arlington, Inc., and Covanta Fairfax, Inc. VADEQ is adopting as part of these SIP revisions additional NO_x control requirements for these three facilities to meet RACT under the 2008 ozone NAAQS, all of which are implemented via Federally enforceable permits issued by VADEQ. These RACT permits, as listed on Table 1, have been submitted as part of each SIP revision for EPA’s approval into the Virginia SIP under 40 CFR 52.2420(d).

² 80 FR 12264 (March 6, 2015).

Virginia's source specific RACT determinations include an evaluation of NO_x and/or VOC controls that are reasonably available for the affected emissions units at each facility and its determination of which control requirements satisfy RACT. VADEQ's RACT determinations are based on the following top-down control technology approach: (1) Identify all available control alternatives; (2) assess technical feasibility; and (3) evaluate remaining technologies in order of control effectiveness considering: expected emissions reduction measured in tons per year (tons/yr), economic impacts measured in dollar per ton of pollutant removed (\$/ton), environmental impacts, and energy impacts. If the top control alternative is not selected as RACT, the rationale for rejection must be documented. The next most stringent control alternative is then assessed, and the process continues until RACT is determined.

VADEQ submitted Federally enforceable permits with the purpose of implementing the requirements of 9VAC5, Chapter 40 (9VAC5-40), sections 7400, 7420, and 7430. Sections 7400 and 7420 required any major NO_x and any major VOC sources, respectively, not subject to other RACT regulations under Chapter 40 to make a source-specific (or case-by-case) determination of what constitutes RACT under the 2008 ozone NAAQS and submit it to VADEQ for approval. Source-specific determinations are not required in the case of major NO_x sources subject to the presumptive NO_x RACT standards of 9VAC5-40, section 7430. Section 7430 also exempts certain smaller NO_x sources from having to make a RACT demonstration.

Table 1. Facilities with Proposed Source-Specific RACT Determinations

Facility Name	Source Type	Facility ID	RACT Permit (Effective Date)	SIP Submittal Date
Virginia Electric and Power Company- Possum Point Power Station	Electric generation utility	Registration No. 70225	Permit to Operate (1/31/19)	2/1/19
Covanta Fairfax, Inc.	Municipal waste	Registration	Permit to Operate	2/14/19

Facility Name	Source Type	Facility ID	RACT Permit (Effective Date)	SIP Submittal Date
	combustor	No. 71920	(2/8/19)	
Covanta Alexandria/Arlington, Inc.	Municipal waste combustor	Registration No. 71895	Permit to Operate (2/8/19)	2/15/19

As part of the February 1, 2019 SIP revision, VADEQ is addressing RACT for the Possum Point Power Station, an electrical generation utility (EGU) facility located in Prince William County owned and operated by Virginia Electric and Power Company. This EGU facility is considered a major source of NO_x and VOC. The Possum Point Power Station is currently subject to source-specific NO_x and VOC RACT requirements established in two separate enforceable documents issued under the facility's former name, Virginia Power (VP)- Possum Point Generating Station: (1) a Consent Agreement between VADEQ and the facility issued on June 12, 1995 and (2) the facility's Permit to Operate issued on September 26, 2000. Both documents were approved as RACT by EPA into the SIP on January 2, 2001. See 66 FR 8.

As part of the February 1, 2019 SIP revision, VADEQ evaluated all NO_x and VOC emission units in operation at Possum Point Power Station and determined that additional NO_x RACT requirements were necessary to meet RACT for emissions unit ES-5. ES-5 is an electric generating boiler with a maximum heat input capacity of 8,500 million British thermal units per hour (MMBTU/hr) and a nominal generating capacity of 840 mega-watts (MW) and burning residual oil as primary fuel and distillate oil as start-up fuel. ES-5 is subject to a source-specific NO_x RACT limit of 0.25 lb/MMBTU on a 30-day rolling basis and calculated daily, based on the SIP-approved Permit to Operate issued on September 26, 2000. The unit is currently equipped with low NO_x burners, overfire air and flue gas recirculation for reducing NO_x emissions. Additional NO_x RACT requirements have been adopted for Boiler ES-5 as part of

the facility's Permit to Operate issued by VADEQ on January 31, 2019 and included for approval into the SIP.

At the time of VADEQ's RACT evaluation for Possum Point, Virginia Electric and Power Company indicated that it expected to retire Boiler ES-5 by June 1, 2021, if it received all required approvals by June 2019. For that reason, VADEQ determined RACT for Boiler ES-5 based on the two possible operating scenarios: (1) the installation and operation of selective non-catalytic reduction (SNCR) by June 1, 2019; or (2) the retirement of the unit by June 1, 2021.³

The January 31, 2019 Permit to Operate requires as RACT, effective on June 1, 2019, the operation of existing NO_x controls and SNCR and compliance with a NO_x limit of 0.17 pounds per million British thermal units of heat input (lb/MMBTU) on a daily basis. The permit also establishes requirements to ensure optimum operation of SNCR and necessary requirements to demonstrate compliance demonstration with the NO_x RACT limit.

Prior the commissioning of the SNCR or in the case that Boiler ES-5 retires and while it remains operational, the January 31, 2019 Permit to Operate establishes as RACT the following requirements for Boiler ES-5: (1) continued compliance with the NO_x RACT emission limit of 0.25 lb/MMBTU on a 30-day rolling average basis, calculated daily, (2) additional restrictions to curtail operations of the unit during ozone season (April 1- October 31 of each year), and (3) necessary provisions to demonstrate compliance with the applicable NO_x control requirements. Operation of Unit ES-5 during ozone season is limited to days in which exceedances of the

³ As specified in the facility's January 31, 2019 Permit to Operate (conditions 1 and 6), the requirement to operate the SNCR can only be voided, if by June 1, 2019: (1) the facility receives all required approvals to retire ES-5 no later than June 1, 2021, and (2) the facility enters into a mutual determination of shutdown for the unit with VADEQ, such that the unit will retire June 1, 2021. VADEQ confirmed that both requirements have been fulfilled and ES-5 is on schedule to be retired by June 1, 2021.

ozone NAAQS are not expected,⁴ except in cases of power transmission and distribution emergencies. These additional provisions are consistent with the SIP-approved RACT requirements in the 2000 Permit to Operate for Boiler ES-5 and ensure the continuous implementation of NO_x RACT for this unit.

As part of the February 1, 2019 SIP revision, VADEQ is also recertifying applicable NO_x and VOC controls for the other two electric generating boilers (ES-3 and ES-4) at Possum Point Power Station as well as VOC controls for Boiler ES-5, all of which were previously approved as RACT on a source-specific basis. VADEQ also determined that that additional VOC controls are not economic or technically feasible for this facility, given the size and VOC emissions from individual emissions units. All other emission units are exempt from a source-specific RACT determination, as allowed under 9VAC5-40, section 7430.

As part of the February 14, 2019 and February 15, 2019 SIP revisions, VADEQ is addressing NO_x RACT for two municipal waste combustion (MWC) facilities with energy recovery: Covanta Fairfax, Inc. (Covanta Fairfax) and Covanta Alexandria/Arlington, Inc. (Covanta Alexandria/Arlington). These MWC facilities are located in Lorton, in Fairfax County and City of Alexandria, respectively, and are considered major sources of NO_x. There are four municipal waste combustors units (MWC units) in Covanta Fairfax and three MWC units at Covanta Alexandria/Arlington. All MWC units are currently subject to source-specific NO_x RACT requirements approved by EPA into the SIP on January 2, 2001 for each facility under their former names: (1) a consent agreement issued on April 3, 1998 for Ogden Martin Systems of

⁴ VADEQ correlates expected ozone exceedances to EPA's forecast of an Air Quality Index (AQI) greater than 100. The AQI is an index produced by EPA on a daily basis associated with daily air quality based on concentrations of different air pollutants, including ground-level ozone. EPA publishes actual and forecast AQIs online at <https://airnow.gov/>.

Fairfax, Inc., currently Covanta Fairfax, and (2) a consent agreement issued on July 31, 1998 for Ogden Martin Systems of Alexandria/Arlington, Inc., currently Covanta Alexandria-Arlington. See 66 FR 8. Each MWC is subject to a NO_x RACT standard of 205 parts per million of volume on a dry basis (ppmvd) at 7% oxygen (O₂). Each facility may also elect to average its NO_x emissions with multiple units, by meeting a more stringent NO_x limit of 185 ppmvd at 7% O₂. Covanta currently operates SNCR on each of the six MWC units to meet NO_x RACT.

VADEQ determined the following control measures as NO_x RACT for each MWC unit at Covanta Fairfax and Covanta Alexandria/Arlington: the installation and operation of Covanta's proprietary low NO_x combustion system, the operation (and optimization as needed) of the existing SNCR, a daily NO_x average limit of 110 ppmvd corrected at 7% O₂, and an annual NO_x average limit of 90 ppmvd at 7% O₂. These NO_x limits are more stringent than the SIP-approved source-specific RACT limits for each unit. The NO_x RACT control requirements for the four MWC units at Covanta Fairfax have been adopted as part of the facility's Permit to Operate issued by VADEQ on February 8, 2019. Similarly, the NO_x RACT control requirements for the three MWC units at Covanta Alexandria/Arlington have been adopted as part of the facility's Permit to Operate issued by VADEQ on February 8, 2019. These permits include a schedule for completing installation of the additional NO_x control on each unit and necessary provisions for each facility to demonstrate compliance with the applicable NO_x control requirements.

EPA believes that VADEQ has considered and adopted reasonably available NO_x and/or VOC controls for each of these facilities. EPA finds that the additional NO_x control requirements and compliance demonstration requirements adopted for the affected units in the January 31, 2019

Permit to Operate for Possum Point Power Station, the February 8, 2019 Permit to Operate Covanta Fairfax, and the February 8, 2019 Permit to Operate Covanta Alexandria/Arlington are adequate to meet RACT for these sources. EPA also finds that re-certification of existing source-specific requirements for Possum Point Station is adequate to meet RACT. Further, EPA determines that the additional NO_x RACT control requirements adopted as part of the Federally enforceable permit for each facility are more stringent than the applicable SIP-approved NO_x RACT requirements, so that approval of these permits into the SIP would be consistent with section 110(l) of the CAA. Additional details on EPA's evaluation of Virginia's February 1, 14, and 15, 2019 SIP revisions are provided in the technical support document for this rulemaking action, available online at <http://www.regulations.gov>, Docket ID: EPA-R03-OAR-2019-02777.

III. Proposed Action

EPA finds that the Virginia's SIP revisions submitted on February 1, 14, and 15, 2019 and addressing source-specific RACT for Possum Point Power Station, Covanta Fairfax, and Covanta Alexandria/Arlington, are adequate to meet RACT requirements set forth under the CAA for the 2008 ozone NAAQS, specifically major non-CTG VOC RACT, major NO_x RACT, and OTR RACT. EPA is proposing to approve Virginia's SIP revisions to satisfy sections 172(c)(1), 182(b)(2)(C), 182(f), and 184(b)(1)(B) for implementation of the 2008 ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by

a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference three Federally enforceable permits, each addressing NO_x and or VOC RACT under the 2008 ozone NAAQS for a major NO_x and/or VOC source, as discussed in section II of this preamble. EPA has made, and will continue to make, these materials generally

available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule, addressing source-specific RACT under the 2008 ozone NAAQS for Northern Virginia, does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

In addition, this proposed rule, addressing source-specific RACT under the 2008 ozone NAAQS for Northern Virginia, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 23, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

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